

Before the **DOCKET FILE COPY ORIGINAL**
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Applications for Consent to the)
Transfer of Control of Licenses and)
Section 214 Authorizations from)
)
AMERITECH CORPORATION,)
Transferor)
)
SBC COMMUNICATIONS, INC.)
Transferee)
)

CC Docket No. 98-141
ASD File No. 99-49

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COMMENTS OF
MGC COMMUNICATIONS, d/b/a MPOWER COMMUNICATIONS CORP.

MGC Communications, Inc. d/b/a Mpower Communications Corporation ("Mpower") submits these comments concerning SBC's request for interpretation, waiver, or modification of the SBC/Ameritech merger conditions.¹

I. PROJECT PRONTO IS ANTICOMPETITIVE

SBC's waiver request nominally raises only the issue of whether SBC or its advanced services affiliate should own line cards at remote terminals and optical concentration devices in the central office. SBC's description of Protect Pronto supporting its waiver request, however, reveals that this project will thwart competition. Project Pronto utilizes an optical technology that limits which DSL technologies may be deployed over the loops provisioned by this technology. Combined with a lack of space at remote terminals, this will severely limit collocation by competitors and will effectively foreclose any meaningful competition for

¹ Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, Public Notice, CC Docket No. 98-141, ASD File No. 99-49, DA 00-335, released February 18, 2000.

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business and residential customers served by loops provisioned with current Project Pronto technology. Project Pronto technology is a bold anticompetitive stroke by SBC that will foreclose the competitive provision of DSL technologies that customers want and that are superior to ADSL. Mpower believes that Project Pronto could serve as a barrier to competitive provisioning of services to as many as 50% of the customers in a given central office area. Project Pronto is a striking example of an ILEC seeking to control the pace and scope of competitive services offered to customers in its service area. More generally, Project Pronto raises the issue of the extent to which an ILEC may make decisions concerning deployment of fiber technologies that continue and heighten the bottleneck characteristics of the local loop in the context of rollout of the next generation of advanced services.

Mpower is very concerned that the anticompetitive breadth of Project Pronto is raised for the first time as merely a sideshow to SBC's waiver request of conditions imposed as part of the SBC/Ameritech merger approval process. In reality, the issues raised by SBC's use of network design as a tool to thwart competition far exceed in importance the merits of its waiver request. At the same time, SBC's request reveals the inadequacy of the separate deregulated advanced services affiliate concept to address the sensitive and important competitive issues raised by Project Pronto. As structured, it appears that the anticompetitive impact of Project Pronto will occur regardless of whether the Commission grants the requested waiver. Accordingly, regardless of its handling of the narrow SBC waiver request, the Commission should immediately address the threat of competition posed by Project Pronto, whether as part of this proceeding, or separately.

II. PROJECT PRONTO IS UNLAWFUL

In the *Advanced Services Order*, the Commission determined that “LECs should not unilaterally determine what technologies LECs, both competitive LECs and incumbent LECs, may deploy.”² In the *Line Sharing Order* the Commission stated that unilateral imposition of advanced services network design standards has “undermined the deployment of the technology to provide competitive deployment of xDSL services, contrary to Congress’s goals in Section 706 of the 1996 Act.”³ These determinations are absolutely correct in reflecting the fact that network design and implementation decisions can have as real a negative impact on competition as direct discrimination. More fundamentally, in an environment of competitive local service providers, key network design decisions must be made on some collaborative basis rather than as unilateral decisions by incumbent LECs. Such decisions, as here, are likely to favor the ILEC. SBC’s decision to deploy Project Pronto with its inherent, and perhaps deliberate, anticompetitive effects directly contravenes the obligations imposed on SBC in the *Advanced Services Order* and *Line Sharing Order*.

Moreover, SBC is required to provide clean, DSL capable loops to CLECs on request.⁴ Mpower respectfully submits that ILECs must provide loops that are capable of being used to

² *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 ¶ 63 (rel. Mar. 31, 1999) (“*Advanced Services Order*”).

³ *Deployment of Advanced Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, FCC 99-355 (rel. Dec. 9, 1999) ¶ 179 (“*Line Sharing Order*”).

⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5 1999) ¶ 172 (“*UNE Remand Order*”).

provide all DSL services, not just ADSL. Project Pronto limits the DSL services that may be provided to ADSL. Therefore, Project Pronto violates SBC's obligation to provide xDSL capable loops. Further, SBC's particular use of remote terminals effectively violates SBC's obligations to permit subloop unbundling and collocation by not providing sufficient space for more than a few CLECs to collocate at its remote terminals.⁵

Because Project Pronto is premised on violations of the Commission's rules, the Commission should simply prohibit SBC from any further deployment of it. Mpower is frankly amazed that SBC would request the limited waivers that it has in order to proceed with Project Pronto, when in fact, to make this project lawful it would need sweeping waivers of fundamental rules and policies promoting the competitive provision of advanced services.

III. COMPETITIVELY NEUTRAL SOLUTIONS ARE AVAILABLE

The Commission should reject the assumption underlying Project Pronto that deployment of advanced services by ILECs can involve anticompetitive effects. Rather, Mpower submits that the Commission may, and should, fashion requirements for this project that will permit SBC to move forward with an aggressive deployment of advanced services without the incidental or deliberate effect of thwarting competition.

Among the more obvious solutions would be to simply require SBC to employ fiber-based technologies that are designed to capture the full potential of fiber. Fundamentally, the Commission should require that fiber-based technologies be provisioned in a way that permits CLECs to obtain capabilities as UNEs which can be used to provide the full range of advanced services, not just ADSL.

⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 96-325, 11 FCC Rcd. 15, 499, 15, 791 ¶ 573 (1996) *UNE Remand Order*, ¶ 205. See also 47 C.F.R. §51.321.

Customers should not be limited to the lowest common denominator just because the ILEC has chosen to offer limited services. In particular, the Commission should specifically require that SBC use fiber-based technologies that permit provision of SDSL and HDSL services.

As part of a competitively neutral deployment of Project Pronto, the Commission could require:

- the extension of fiber all the way to the customer's premises. This would eliminate remote terminals and the potential for manipulation of space limitations by incumbent LECs to the disadvantage of competitors;
- physical, cageless collocation or "cabinet" collocation in distribution huts or other structures;
- the provision of unbundled SDSL and HDSL and other services where ADSL is offered; and
- construction of parallel copper loops.

These measures could help assure that Project Pronto is implemented in a way that does not disadvantage competitors.

IV. THE COMMISSION SHOULD REQUIRE FURTHER INFORMATION

Before permitting Project Pronto to proceed, the Commission should request further information from SBC in order to support the development of a competitively neutral solution to advanced services deployment. This should include:

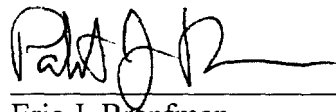
- by central office, how many carrier systems are deployed throughout the SBC system?
- what route distance is each carrier system from the central office?
- how many lines does each carrier system serve?

- what is the nature of the equipment enclosure? Is it a hut, a locked cabinet, a vault? How many racks spaces are utilized? How many inches of unused rack space are available?
- Do parallel copper-only facilities exist?
- Why can SBC not deploy equipment that supports a full range of xDSL services in addition to ADSL?

V. CONCLUSION

For these reasons, the Commission should prohibit further development of Project Pronto until SBC has complied with the Commission's requirements and SBC has fashioned a competitively neutral implementation of that project.

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CERTIFICATE OF SERVICE

I Candise M. Pharr hereby certify that on the 3rd of March 2000, the attached Comments of MGC Communications, d/b/a Mpower Communications Corp. have been served on the following parties via hand delivery and U.S. Post Office mail.

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